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## Brussels Admits EU Law Does Not Apply to Nord Stream 2

The European Commission has admitted there is no legal ground to apply EU energy laws to Gazprom's Nord Stream 2 gas pipeline project despite its long-drawn opposition to the plan.

In a Sep. 12 letter sent to a member of the European Parliament by the commission and leaked to the press, the commission's legal service said that the application of the EU's Third Energy Package regulations to offshore import pipelines such as Nord Stream 2 "would raise specific legal and practical questions, arising ... from the fact that Union rules cannot be made unilaterally binding on the national authorities of third countries."

A commission spokeswoman confirmed the veracity of the letter, which was sent in response to a request from Jerzy Buzek, chairman of the parliament's committee on industry, research and energy, and was signed by the commission's Vice President Maros Sefcovic and EU Energy Commissioner Miguel Arias Canete.

The letter would confirm Brussels' weak position to seek a mandate to negotiate with Russia on behalf of EU member states to apply a special legal provision to govern over the offshore sections of the Russian-led pipeline project, which is planned to supply Germany directly with Russian gas via a 1,200 kilometer line under the Baltic Sea.

Gazprom and its European project financing partners — Royal Dutch Shell, Germany's Uniper and Wintershall, France's Engie and Austria's OMV — have repeatedly asserted there is no reason to hold such negotiations, as applying EU rules to the project would be a discriminatory practice, particularly as a twin pipeline, Nord Stream, already operates through a similar route.

The letter comes a week after a plenary session in the parliament showed a general backing from members of parliament to find ways to bring Nord Stream 2 in line with EU law (IOD Sep.15'17).

In the letter, the commission's legal service said that none of the EU rules "expressly provide for their application to an offshore import pipeline connecting a member state with a third country."

The argument from Brussels has stated that a special legal mandate is required to prevent the 55 billion cubic meter per year Nord Stream 2 project from being implemented in a "legal void." But the letter shows an admission that the offshore section of the pipeline is subject to the jurisdiction of Russia and the EU member states — Finland, Sweden, Denmark and Germany — through whose territorial waters the line will cross.

The commission does state in the letter that, due to the difference between Russian and European legislation, there could be a situation of "conflict of laws," which "would best be resolved through international negotiations."

The mandate is currently being discussed by the EU's Council of Ministers, who are expected to meet once again to discuss the

matter before the end of the year.

Observers believe Brussels' mandate is plagued with problems, starting with the fact that it would not ensure that Moscow must negotiate.

"If the commission does secure the mandate, it would acquire certain legitimacy to negotiate, and it would be difficult for Russia to refuse entering negotiations; nonetheless Russia could still refuse to negotiate," according to Katja Yafimava, senior research fellow at the Oxford Institute for Energy Studies. Even if Russia does agree to negotiate, Yafimava doubts whether Moscow will accept the application of EU energy law to the project.

Also, the position of the EU varies, as many countries disagree with the project altogether. On the other hand, some countries in Northwest Europe, such as Germany, consider Nord Stream 2 as necessary to meet their significant gas demand amid declining domestic European production, which could mean that the commission looks unlikely to get the required majority in the council to secure the mandate, Yafimava said.

Germany and some other countries came out in strong opposition to recent US sanctions that target Russian export pipeline projects, although Moscow seems determined to move forward with Nord Stream 2 despite Washington's actions (IOD Aug.1'17).

✉ **Vitaly Sokolov, Moscow, and Jaime Concha, Copenhagen**

